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September 27, 2005

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Re: Comments on Proposed Rule Part 741.8

Dear Ms. Rupp:

I am submitting the following comments on proposed revisions to Part 741.8 as General Counsel to NACUSO.

The question posed by NCUA is whether Part 712.3 and 712.4 should be applied to federally insured state chartered credit unions (FISCUs) so as to require FISCUs to follow the same CUSO structural, accounting, audits, NCUA access and corporate separateness as required for federally chartered credit unions (FCUs).

My experience in helping FISCUs form CUSOs for twenty years is that they already substantially follow the concepts in Part 712.3 and 712.4. It is good practice and the state credit union regulators expect credit unions to act prudently. While more states are writing specific CUSO regulations, many adopt the NCUA principals explicitly or as a guide in interpreting less specific CUSO regulations.

We question the necessity to compel the application of Parts 712.3 and 712.4 to FISCUs. Have there been actual losses to FISCUs caused by CUSOs or is the NCUA speculating on possible problems? We are not aware that the state credit union regulators were failing in their duty to supervise the permitted structure and corporate separateness of CUSOs. Why does NCUA feel compelled to preempt the ability of state credit union regulators from regulating their credit unions' CUSO activity?

The power of the dual chartering system permits more opportunity for innovation. Some innovation will be successful and some will not but the ability to have multiple opportunities to



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innovate makes all credit unions stronger. The member business loan regulation innovations made by some states exemplify the advantages of the dual chartering system.

In comparing some state CUSO regulations with Part 712, some state credit union regulations permit greater investment powers, some permit lesser or no lending powers, some permit activities not within the permitted activities of Part 712.5, some require CUSOs to serve only members, and some permit more services to nonmembers due to different statutory authority.

The powers of state chartered credit unions often differ from federally chartered credit unions, yet there is no push to homogenize state and federal credit unions to look and act the same. By starting down the path of homogenizing CUSOs, we run the risk of stripping the ability of CUSOs to innovate under different regulatory schemes at a time when the credit union industry sorely needs innovation to compete in the financial marketplace.

We strongly urges the NCUA not to take any action at this time that would preempt the state credit union regulators from establishing rules the state credit union regulators deem appropriate for their state chartered credit unions. Allow them the opportunity to innovate. If there is historical evidence of a threat to the safety and soundness to the share insurance fund due to lack of sufficient state credit union regulator oversight, then action may be justified. In the absence of a demonstrated and immediate threat to the share insurance fund, we urge you to delay additional regulation and monitor the safety and soundness of CUSOs formed by FISCUs. We believe that the state credit union regulators will continue to provide the necessary oversight.

Very truly yours,

Guy A. Messick

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